



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 216 53851 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly identifiable
invasion of privacy

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an insurance company that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the beneficiary is qualified to perform the duties of the proffered position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. The petitioner's June 19, 2002 letter indicated that a candidate must possess a bachelor's degree in business administration, accounting, or a related field.

The director found that the beneficiary was not qualified for the proffered position. According to the director, the credentials evaluator determined that the beneficiary possesses the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. The director stated that a bachelor's degree in business administration alone, without a concentration of coursework in a specific area, is insufficient to qualify the holder as a member of the professions or of a specialty occupation.

On appeal, counsel states that the beneficiary is qualified for the position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

Counsel contends that the director's reliance on *Matter of Ling*, 13 I&N 35 (Reg. Comm. 1968) is misplaced in light of the information provided by the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) which states that "most accountant and internal auditor positions require at least a bachelor's degree in accounting or a related field," and counsel cites prior AAO cases that describe the term "related field."

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in business administration. According to the court in *Matter of Ling*, a bachelor's degree in business administration, without a specific concentration, does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. In *Matter of Ling*, at page 36, the court stated that business administration:

[I]s a broad field, a field which contains various occupations and/or professions, all of which are related to the world of business but each requiring a different academic preparation and experience peculiar to its needs. The OCCUPATIONAL OUTLOOK HANDBOOK, also published by the Department of Labor, shows that business administration is a general term and includes various occupations such as accountant, advertising workers, industrial traffic manager, marketing research workers, personnel workers, and purchasing agents; thus, including both professional and nonprofessional activities. Careful review of the discussion of these occupations shows that while all are related to the world of business, each has its own emphasis on the academic training and experience required for qualification in that occupation. It is evident that while a person may have a degree in business administration, such degree may qualify him for some but not all of the occupations included in the broad field of business administration. For example, a person with a degree in business administration, major in accounting, would not qualify as a public relations man or personnel manager and vice versa. Therefore, a petitioner with a business administration degree must

clearly establish a particular area and occupation in the field of business administration in which he is engaged or plans to be engaged and must also establish that he meets the special academic and experience requirements of that designated activity, as a prerequisite to a determination as to professional status.

The *Handbook* relays that most accountant positions require at least a bachelor's degree in accounting or a related field. In the referenced AAO decisions, the language, "related field," applied to situations whereby a beneficiary holds a bachelor's degree in business administration, but the degree has an emphasis in a particular field. For example, in the case identified as LIN 96 115 51592, counsel describes the AAO as concluding that the beneficiary was qualified to perform the duties of a specialty occupation, financial analyst, because a credentials evaluator determined that the beneficiary held the "equivalent of a bachelor's degree in business administration with a concentration in accounting and auditing." Similarly, counsel states that in the case identified as LIN 96 007 51384, the AAO found that the beneficiary was qualified to perform the duties of a specialty occupation because the beneficiary possessed a bachelor's of science degree in business administration with a major in finance.

In the instant petition, the beneficiary holds a bachelor's degree in business administration, but the degree does not have a specific emphasis of study. Consequently, the beneficiary is not qualified to perform the duties of a specialty occupation based on *Matter of Ling* and the cited AAO cases.

Counsel states that the application of a specific degree or "substantial coursework" requirement is an inflexible arbiter of whether the beneficiary is a professional. Counsel points to the court decision in *Augat, Inc. vs. Tabor*, 719 F. Supp. 1158 (D. Mass. 1989) which stated:

The application of a degree requirement as an inflexible arbiter of whether an individual is a professional in his field deprives him of the opportunity to demonstrate that an exception to the general degree requirement is warranted.

The facts in *Augat* are distinguishable from the instant petition. In *Augat*, the court found that the submitted evidence demonstrated that the beneficiary's skill, knowledge, and experience in the area of international management was equivalent to a bachelor's degree in the field, even though the beneficiary lacked a formal baccalaureate degree. In the instant petition, although the beneficiary possesses a bachelor's degree in business administration, the degree does not have a specific concentration. Consequently, CIS shall determine whether the beneficiary's training, experience, and education provide a specific emphasis of study in a relevant field. The petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work

experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The evaluator from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials, concluded that the beneficiary possesses the equivalent of a bachelor's degree in business administration from an accredited U.S. college or university. Because the beneficiary possesses a generalized degree, without a specific concentration, the petitioner fails to establish that the beneficiary qualifies to perform a specialty occupation under the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D).

CIS must therefore determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record in this proceeding contains the beneficiary's degree and transcripts, and a translation of these documents. The transcript shows that the beneficiary had completed five relevant courses: elementary accounting I and II, accounting for management, computer application, and information technologies management. This is insufficient to establish a concentration in either accounting or a related field. The AAO finds unpersuasive counsel's contention that coursework in mathematics, business communications, and computers is a realistic prerequisite to accounting or a related field; such courses do not establish a specific concentration in accounting or a related field.

The evidentiary record contains no documentation of the beneficiary's prior employment. Consequently, the petitioner cannot demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting or a related field. There is no evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the Foundation for International Services has neither experience nor education in accounting or a related field.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.